



NPS Digital Library Program
Information Services Division
National Information Systems Center
Office of the Chief Information Officer

NPS Focus Policy on Publishing Digital Resources to the Web

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THIS IS AN EARLY DRAFT AND HAS NO OFFICIAL APPROVAL – June 27, 2005

Posting digital images, texts, drawings, etc. to the Web is a type of publication and MUST comply with federal and state laws and regulations and National Park Service and NPS Focus policies for publication.

This policy is designed to provide overall guidance on publishing digital resources to the Web. **It is the responsibility of each park/program that is publishing to NPS Focus to determine and act upon any legal and policy issues including copyright, privacy, and sensitivity for each digital resource.**

Quick advice:

- **If the resource was NOT created by an NPS employee on work time:**

Study "Section I. Intellectual property rights: copyright and ownership of digital images, texts, drawings, etc."

- **If the resource shows the recognizable face of a living person who is not an NPS employee on work time:**

Study "Section II. Privacy rights: Digital images, etc. that display the recognizable face of a living person"

- **If the resource reveals information that is considered "sensitive"**

Study "Section III. Sensitive information: Digital images, texts, etc. that contain sensitive information" such as the locations of caves, wells, Indian burial grounds, archeological sites, endangered species, OR specific features of buildings such as ventilation, etc.

Table of Contents

I. Intellectual property rights (copyright and ownership) of digital images, texts, drawings, etc.

A. General guidelines	3
B. Public domain	3
C. Works where copyright/ownership has been transferred to the NPS	3
D. Works created by an independent contractor	4
1. Contract specifies that the NPS has unlimited use of the resource for NPS purposes	
2. Contract does not grant the NPS rights to reproduce/publish the resources in digital format	
3. Include language in future contracts that will provide for the Web publication of information resources	
E. Works copyrighted or owned by a private individual or agency	5
F. Content from another federal agency, e.g. NARA	6
G. Restricted and unrestricted gifts of information resources for Web publication	6
H. Table of Ownership and Required Actions	7

II. Privacy Rights: Digital images, etc. that display the recognizable face of a living person

A. General guidelines	10
B. Guidelines for images of NPS staff taken during work hours	10
C. Guidelines for images of persons now deceased	10
D. Guidelines for images of park volunteers, re-enactors, living history participants	10
E. Guidelines for images of well-known persons and public figures	11
F. Guidelines for private persons such as park visitors	11

III. Sensitive information: Digital images, texts, etc. that contain legally restricted or sensitive information

A. General guidelines	12
B. NPS Focus records: public vs. staff only access	12
C. Digital information resources with legal restrictions (for illustrative purposes only)	12
D. Obscenity, slander, hate language	13

IV. Appendices: Forms

- Form1: Model Release Form for Use of Likeness in Image, Audio or Video
- Form 2: Deed of Unrestricted Transfer of Rights of Information Resource(s)
- Form 3: Deed of Restricted Transfer of Rights of Information Resource(s)

Section I: Intellectual property rights (copyright and ownership) of digital images, texts, drawings, etc.

A. General guidelines

Under Section 101 of the 1976 Copyright Act as amended, a work is protected by copyright from the time it is created in a fixed form which may be physical or digital. It does not need to be registered or otherwise noted for copyright to apply. This means that at the time an author writes a report, a photographer takes a picture, a cartographer draws a map, or an architect makes a drawing, it become the personal property of the author.

THE NATIONAL PARK SERVICE DOES NOT AUTOMATICALLY OWN WORKS CREATED BY CONTRACTORS AND STAFF MUST OBSERVE POLICY FOR USE AND REPRODUCTION OF THESE WORKS IN ORDER TO AVOID COPYRIGHT INFRINGEMENT.

There is no exception in U.S. Copyright Law for Intranet publication. Any copyright protections that apply to publication on a publicly available Web site will also apply on the NPS Focus Intranet site.

B. Public domain

Definition of Public Domain: A digital (or physical) resource is in the “public domain” if it is no longer under copyright protection OR if it failed to meet the requirements for copyright protection. Since information resources created by federal agencies, e.g. the National Park Service, can not be copyrighted, all information resources created by NPS staff on work time will fall into the public domain.

In general, works in the public domain may be freely accessed, used and reproduced by the public without the written permission of the National Park Service. For example, a private person may download a public domain image from NPS Focus and re-publish it to his/her own Web site. There are exceptions to this rule when the content falls into a protected area such as privacy, sensitivity, or security and therefore it is critical that the NPS Focus record advise end users (staff and/or public) of access and re-use restrictions.

C. Works where copyright/ownership has been transferred to the NPS

If the owner of the digital resource(s) has transferred all rights to the digital resource(s) in a signed document, then the digital resource(s) will fall into the public domain. The permission must be given in writing using NPS approved wording.

A contract or other signed document that transfers to the NPS the right to use the digital resource(s) “for National Park Service purposes” does NOT put the resource in the Public Domain since this statement does relinquish copyright ownership or grant the NPS the unrestricted right to make the resources available for the public to reuse.

D. Works created by an independent contractor

If the NPS specially orders or commissions a digital or physical resource to be created by an independent person or agency (not an NPS employee on work time), the copyright is understood to be retained by the independent person or agency UNLESS THE CONTRACT SPECIFICALLY STATES OTHERWISE.

The NPS does not automatically possess the right to publish the resources to the Web or to authorize use of the resource to any other federal agency or private person.

In such cases, the NPS must be guided by the actual language of the contract.

1. Contract specifies that the NPS has unlimited use of the resource for NPS purposes

NPS staff may publish the digital resource to NPS Focus but MUST also:

- a) indicate in the NPS Focus record that: Restrictions apply on use and/or reproduction
- b) indicate in the NPS Focus record the owner of the copyright in a phrase like this one:

Copyright of the digital resource(s) on this record is retained by the creator who was commissioned by the NPS. Permission for any use of the resource(s) outside of the Fair Use Clause of U.S. Copyright Act must be granted by the copyright holder: XYZ Photography Firm, 1234 Miserly Street, Podunk, GA 13356

If complete information about the copyright holder is not easily available, a shorter version may be substituted but it will be the responsibility of the NPS Focus “record owner” to service any request that comes in from the public to identify the contractor who holds the copyright.

Copyright of the digital resource(s) on this record is retained by the creator who was commissioned by the NPS. Permission for any use of the resource(s) outside of the Fair Use Clause of U.S. Copyright Act must be granted by the copyright holder.

2. Contract does not grant the NPS rights to reproduce/publish the resources in digital format

If the contract does not explicitly state the rights of the NPS to publish, re-use or authorize the re-use of the resource(s) outside of the NPS, contact the copyright holder who is usually the original contractor, and request that they grant permission to publish the resource electronically.

Permission must be given in writing and signed. You may choose to use one of the forms that are in appendices to this policy:

“Deed of Unrestricted Transfer of Rights of Information Resource(s)”

“Deed of Restricted Transfer of Rights of Information Resource(s).”

3. Include language in future contracts that will provide for the Web publication of information resources

Work with your NPS contracting officer to determine language that is legal and appropriate for the type of work that is being commissioned.

The following statements are designed for illustration purposes only. Contracting officers are trained in the correct language to be used for different types of products and services.

Example 1: Transfer of rights, resources become part of the public domain:

The contractor agrees that upon completion of the contract all rights to the physical and/or digital versions of this work will pass to the National Park Service.

Example 2: Unrestricted right for NPS to publish/reuse; contractor retains copyright:

The contractor secedes to the National Park Service unlimited rights for use or re-use of the physical and/or digital versions of this work for National Park Service business.

E. Works copyrighted or owned by a private individual or agency

NPS staff should consider carefully before including in NPS Focus information resources that are copyrighted by a private person or agency. The NPS Focus Digital Library is conceived as a method for publishing digital resources:

- created by the NPS
- commissioned by the NPS through a contract
- received by the NPS as gifts and donations

The NPS should avoid becoming a publisher for private interests, particularly those who are looking for a medium to market their content to acquire royalties or other types of gain.

If there is a compelling reason to publish privately owned resources on NPS Focus (perhaps because the copyright holder is a partner or friends group), you should do the following four things:

1. Obtain clear written and signed permission from the copyright holder to publish their resources electronically and physically
2. Obtain complete information about how to contact the copyright holder including full name and address. It will be your responsibility to redirect user requests to them.
3. Include full information about how to contact the copyright holder on the record (if privacy is an issue (e.g. a private person's home address) include this information in the Internal Note which does not display to the public.
4. Add copyright and restrictions information to the NPS Focus record(s) as described in section D.1.

F. Content from another federal agency, e.g. NARA

Physical or digital resources that are located in another federal agency such as the National Archives and Records Administration (NARA) do NOT automatically fall within the public domain.

It is the responsibility of NPS staff that wish to publish another agency's resources to contact that agency and determine if the resources fall within the public domain.

If the resources are in the public domain, formally indicate to that agency your interest in publishing their resources. (Would you want another agency to publish your resources without your knowledge?) Consider a possible project partnership.

If the resources are not in the public domain, you are advised not to add these resources to NPS Focus. If there are compelling reasons to add them, you will need to obtain written permission from the copyright holder as described in section "E. Works copyrighted or owned by a private individual or agency." You should also keep the agency that houses the resources informed of your project.

G. Restricted and unrestricted gifts of information resources for Web publication

The NPS may receive a "gift" which staff would like to include on NPS Focus. Examples of this may be:

- Park visitor brings in a slide or digital image collection
- Graduate student offers a copy of thesis

- Professor offers to share an article
- Friends group has a collection of historical letters or photographs

Before NPS can consider adding these resources to NPS Focus, the donor must sign over some or all rights for the publication and use of the resources.

This permission must be given in writing and signed. You may choose to use one of the forms that are appendices to this policy:

- “Deed of Unrestricted Transfer of Rights of Information Resource(s)”
- “Deed of Restricted Transfer of Rights of Information Resource(s).”

H. Table of Ownership and Required Actions

The following table provides a quick overview to the content in the above sections on Intellectual Property Rights.

The table is intended to help users identify relevant sections and is not intended to replace familiarity with the information found in these sections.

Table of Ownership and Required Actions		
Category of Ownership	Action Required	Metadata Required
1. Info resource created by NPS staff on NPS time	none	Rights: Public domain Rights info: <i>n/a</i>
2. Info resource created by a contractor a) Contract specifies that all rights and ownership are transferred to the NPS	The original contract MUST be consulted for all information resources created by a contractor to determine rights and ownership.	Rights: Public domain Rights info: <i>n/a</i>
2. Info resource created by a contractor b) Contract grants the NPS the right to publish the resources but not to authorize reuse by third parties	The original contract MUST be consulted for all information resources created by a contractor to determine rights and ownership.	Rights: Restrictions apply on use and/or reproduction Rights info: <i>provide as much info as possible on both the holder of the rights and the rights specified by the contract</i>
2. Info resource created by a contractor c) Contract does not indicate whether the NPS is given the right of ownership or the right to publish the information resource(s) or to authorize reuse by third parties	Right to publish (e.g. to the Web) must be stated in the contract. If it is not there contact the rights holder and request that they complete the form "Deed for Un/Restricted Transfer of Rights of Information Resource(s)"	Follow 2 a) or 2 b) depending on the release granted by the rights holder of the information resource
2. Info resource created by a contractor d) Contract and/or name of contractor cannot be determined	Consider carefully whether to proceed as the publication of the resources may be in violation of U.S. Copyright Law or other guidelines protecting intellectual property rights.	Rights: Restrictions apply on use and/or reproduction Rights info: The National Park Service has been unable to determine the ownership of this/these resource(s) and they may be under the protection of U.S. Copyright Law. It is the responsibility of the persons wishing to reproduce it/them to determine legal compliance.

<p>3. Donation/gift of information resource(s) by a private person or organization (e.g. slide or photo collection, academic article or thesis)</p>	<p>The right of the NPS to publish (e.g. to the Web) and the right of users to reproduce the info resources must be determined prior to publication. Contact the donor/rights holder and request that they complete the form "Deed for Un/Restricted Transfer of Rights of Information Resource(s)"</p> <p>If the owner of the rights to the resource(s) refuses to sign the Deed of Transfer as worded, consider refusing the donation. Consult an NPS attorney, if you decide to continue.</p>	<p>Rights: Rights info:</p> <p>For Unrestricted Transfer of Rights, follow 1. above</p> <p>For Restricted Transfer of Rights, follow 2b). above</p>
<p>4. Information resource(s) created or owned by another federal agency (e.g. NARA, USGS)</p>	<p>Contact the agency to determine if there are any copyright/rights associated with the info resource(s); "Federal" does not equal "public domain!"</p> <p>If resource is public domain, consider a sharing partnership with the other agency.</p> <p>Otherwise contact the rights holder and request that they complete the form "Deed for Un/Restricted Transfer of Rights of Information Resource(s)"</p> <p>If the owner of the rights to the resource(s) refuses to sign the Deed of Transfer as worded, consider not adding these resources. Consult an NPS attorney, if you decide to continue.</p>	<p>Rights: Rights info:</p> <p>For Public Domain resources or those with an Unrestricted Transfer of Rights, follow 1. above</p> <p>For Restricted Transfer of Rights, follow 2b). above</p>

Section II: Privacy Rights: Digital images, etc. that display the recognizable face of a living person

A. General guidelines

There are many different federal, state, and local laws controlling privacy and these are in a state of flux especially with reference to publication of private information on the Web.

NPS staff are encouraged to take “the high road” when publishing images that display the recognizable face of a living person. In a narrow interpretation of privacy law, visitors to a park are appearing in a public place and should have limited legal expectation of privacy. In reality persons visit a park for personal enjoyment and have an expectation that the government will not do anything to cause them unwanted publicity.

A “Model Release Form” as found in the Appendices is used for private persons to authorize the NPS to publish an image that may contain their recognizable face.

Use the following guidelines for determining if it is acceptable to publish an image of a private person.

If uncertain how to proceed in a particular instance, consult with an NPS privacy officer or solicitor.

B. Guidelines for images of NPS Staff taken during work hours

Images taken of NPS staff during the regular work hours generally may be published to the Web with no signed release form especially for any work being done in view of the public.

However, park staff performing “behind the scenes” duties such as cleaning and maintenance may have some expectation of privacy. It is recommended that these staff sign a Model Release Form before publication of images depicting them doing work that is generally not done before the public.

C. Guidelines for images of persons now deceased

A person who is deceased can have no legal expectation of privacy. Therefore it is permitted to publish to NPS Focus an image of a person who is deceased.

D. Guidelines for images of park volunteers, re-enactors, living history participants

Persons who knowingly participate in park activities that include the public should have no expectation of privacy. It is permissible to publish images of them to NPS Focus but it is always advisable to obtain a Model Release Form whenever possible.

Volunteers and other persons who participate in activities that take place “behind the scenes” and out of the public eye may have some expectation of privacy. Always obtain a Model Release Form before publication of images depicting them participating in activities that are generally not done before the public.

D. Guidelines for images of well-known persons and public figures

In general, it is permitted to publish an image of a public person such as a government official, musician, actor, athlete or other celebrity who is visiting a park or attending an NPS sponsored function. Because these persons have already placed themselves in the public eye they would have little expectation of privacy

However, do not publish an image that would portray that person in an embarrassing light (e.g. they fell down) or if the image may falsely imply that the person is endorsing a person, place, or thing *unless* the person has signed a Model Release Form permitting the Web publication of the image.

E. Guidelines for private persons such as park visitors

NPS staff should use common sense when publishing an image to NPS Focus with the recognizable face of a living person who is a park visitor.

Visitors to parks and park functions expect a reasonable amount of protection from public intrusion in their private lives. Consider this, “Would you want your face published on someone’s Web site without your knowledge or consent?”

For adults, obtain a Model Release Form.

Do not publish the recognizable face of a child without a Model Release Form signed by a parent or legal guardian.

For Web publication of older photographs, it may be too late to identify a person and obtain a Model Release Form. Use common sense in assessing the image. Would the participants have guessed that they were participating in an activity where they may have been photographed, e.g. a group bicycle race?

If a private person objects to an image of themselves or their family that has been published to NPS Focus – even if they have signed a Model Release Form -- remove the image immediately. The NPS has no wish to offend its park visitors.

Section III: Sensitive information: Digital images, texts, etc. that contain legally restricted or sensitive information

A. General guidelines

In the course of providing stewardship of NPS natural and cultural resources, staff may acquire digital information resources (images, texts, drawings) that are not appropriate for public dissemination.

This may include information resources that are restricted by law or federal policy. Or it may include a common sense assessment that publication may somehow put the safety of a cultural or natural resource, staff, or visitor at risk.

This policy does not attempt to present a definitive list of instances where a cultural, natural, or administrative information resource may be considered sensitive. The examples listed below are intended to be illustrative and should not be considered comprehensive or authoritative.

B. NPS Focus records: Public vs. Staff Only Access

Each and every record added to NPS Focus can be restricted to “NPS staff access only.”

Since each record added to NPS Focus is owned by a park, program, or other NPS office, it is the responsibility of the “record owner” to make the final determination if the digital information resource may be published for “public access” or should be restricted to “NPS staff only.”

C. Digital information resources with legal restrictions (for illustrative purposes only)

The following items are general guidelines to red-flag areas of sensitive information in the NPS. They are not intended to be comprehensive or used as a final authority.

In determining if specific information may be displayed to the public or otherwise provided to the public, NPS staff should consult as appropriate a natural resources or cultural resources officer, the office of Public Affairs, their FOIA officer, and/or an NPS solicitor. Follow the established practices of your park, program, or other NPS office in making this determination.

Staff should consider and address legal restrictions before publishing any image, text, drawing, sound file, video, or GPS or other data that:

- Reveals the location of a cave (Federal Cave Resources Protection Act of 1988)
- Reveals the nesting location or other habitat information of threatened and endangered species (Endangered Species Act of 1973)
- Reveals the location of paleontological sites or archeological resources (Archeological Resources Protection Act of 1979 (ARPA))
- Reveals the location of Indian sacred sites such as burial grounds or places of worship (Executive Order 13007 – Indian Sacred Sites (May 24, 1996))
- Reveals the locations, character, or ownership of historic resources if the disclosure may risk harm to the resource (National Historic Preservation Act of 1966 as amended)
- Reveals the location of architectural/engineering features or physical items that would render a structure vulnerable such as ventilation systems or the storage rooms of flammable materials such as gasoline.

D. Obscenity, slander, hate language

National Park Service staff shall follow NPS and Dept. of the Interior guidelines regarding the non-publication of information resources that may be considered offensive due to obscenity, slander, or the inclusion of hate language.